

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP No. 127/2000 (S/S)
Smt. Charanjeet Kaur
Vs
I.G. Police U.P. Lucknow and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 29.3.2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 127 of 2000 (SS)

Smt. Charanjeet Kaur
W/o Sri Satnam Singh
Heer Nagar, Haldwani, District Nainital Petitioner

Versus

1. Inspector General of Police Intelligence
U.P. Lucknow.
2. Deputy Inspector General of Police Intelligence
U.P. Lucknow
3. Superintendent of Police, Udham Singh
Nagar Respondents

Sri Manoj Tiwari, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 29.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Manoj Tiwari counsel for the petitioner and
Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for
a writ of certiorari quashing the orders dated 27.7.2000,
30.6.99 and 9.7.1998 passed by respondents no. 1, 2 & 3
respectively.

Briefly stated the petitioner is a constable in Local
Intelligence Unit of U.P. police and presently posted at
Khatima, District Udham Singh Nagar. According to her on
17.5.2000, when she was on causal leave at Kashipur she fell ill.
She was admitted in Civil Hospital, Kashipur and later on to
District Hospital, Rudrapur. On the advise of doctors she
applied for leave for eight weeks and took treatment from the

doctors of District Hospital, Rudrapur. She joined her duty on 6.8.1997. She again fell ill on 16.8.1997 and after availing medical leave for 15 days she joined her duty on 30.8.1997. Thereafter she again fell ill on 31.8.1997 and she remained on leave till 14.9.1997. A show cause notice was issued to her by respondent no. 3 whereby she was called upon to show cause as to why the period of absence from her duty be not treated as leave without pay.

A preliminary enquiry was held against the petitioner by the Circle Officer, Police Khatima, Udham Singh Nagar. The petitioner has alleged that the enquiry officer has conducted enquiry ex parte and submitted report. Respondent no. 3 vide order dated 9.7.1998 converted medical leave as leave without pay and also awarded censure entry to the petitioner. The petitioner filed an appeal against the order of conviction before the respondent no. 2 who in a cursory way rejected the same vide order dated 30.6.1999. Felling aggrieved by the said order the petitioner preferred a revision before the respondent no.1, who also dismissed the same vide order dated 27.7.2000.

Counter affidavit has been filed by the respondents. The respondents have not controverted the fact of ailment of the petitioner and her taking treatment in the civil Hospital. The only assertion of the respondents is that during the entire period of illness the petitioners was not remained admitted in the hospital and she got treatment as out-door patient, which proves that she was not seriously ill.

The counsel for the petitioner has submitted that in view of **Rule 18 of the U.P. Fundamental Rules** contained in the Financial Hand Book, the petitioner was not liable to face Disciplinary proceedings and the absence from duty for the

period of less than 5 years with or without leave was capable of being dealt with under a Summary Inquiry and the absence from duty was capable of being condoned under the Principle of “No work no pay”, without initiating any Disciplinary proceeding and, therefore, the punishment order is liable to be vitiate. Rule 18 of the U.P. Fundamental Rules contained in the Financial Hand Book is reproduced to below:

“18. Unless the Government in view of the special circumstances of the case, otherwise determine, after five years’ continuous absence from duty elsewhere than on foreign service in India, whether with or without leave, no Government servant shall be granted leave of any kind. Absence beyond five years will attract the provisions of Rules relating to disciplinary proceedings.”

The counsel for the petitioner has submitted that a govt. employee who remains absent form duty for a period of less than 5 years may be liable to face Disciplinary proceedings only in special circumstances of the case, for which sufficient reasons have to be there in the order directing initiation of disciplinary proceedings.

I find force in the submission of the learned counsel for the petitioner that the provisions of Disciplinary proceedings are not attracted in the present case in-as-much as the allegations of absence from the duty against the petitioner is not beyond the period of 5 years, particularly when no special circumstances have been set forth by the Disciplinary authority in any order to initiate Disciplinary proceedings against the

petitioner. I also find force in the submission that the absence for the period of less than 5 years with or without leave may be capable of being dealt with under a Summary Inquiry without initiating any Disciplinary proceeding and the absence from duty may be capable of being condoned under the Principle-“No. work no pay”. Therefore, there was no justification on the part of the department to initiate any Disciplinary proceedings against the petitioner. The inquiry initiated against the petitioner was without authority of law.

The only basis for initiating disciplinary proceedings against the petitioner is that she applied and actually got sanctioned medical leave for four weeks from 17.5.97.

Rule 81-B (2) of Financial Hand Book Vol. II (Parts II to IV) Ch. X provides for Leave on medical certificate. This rule reads as under:

(2) Leave on medical certificate- *(i) A Government servant to whom these rules apply may be granted leave on medical certificate not exceeding twelve months in all during his entire service. Such leave shall be given only on production of a certificate from such medical authority as the Governor may, by general or special order, specify in this behalf and for a period not exceeding that recommended by such medical authority.*

The allegation against the petitioner is that he applied medical leave on production of certificate issued by the Medical Officer, District Hospital, Rudrapur and medical leave for different periods were applied by the petitioner on the recommendation made by the Medical Officer of District Hospital, Udham Singh Nagar. The charge against the petitioner is that during the period of medical leave she

remained at her house and got treatment as out-door patient. Therefore, her illness was not serious.

There is no allegation against the petitioner that the certificate produced by her was not issue by the doctor whose name has been shown in the certificate. There is also no allegation that the Medical Officer was not authorized to issue such certificate.

Chapter IX, Rule 96 of Financial Hand Book Vol. II (Parts II to IV) provides for second medical opinion in case the sanctioning authority is not satisfied by the medial certificate produced before it for leave. The said rule reads as under:

96. (a) *Where the leave is for a period of one month or less and the incapacity is not due to definite injury, the authority competent to sanction leave may, at its discretion, secure a second medical opinion by requesting the civil surgeon to have the applicant physically examined. Should it decide to do so, it must arrange for the second medical examination to be made on the earliest possible date after the dated on which the first medical opinion was given.*

Thus instead of following the rules and procedure prescribed under the law, the respondent no.3 chose to sit over the doctors of Civil Hospital, as chief medical jurisprudent and held that the ailment which the petitioner was suffering was not serious in nature.

Thus instead of sanctioning medical leave to the petitioner, respondent no.3 ordered inquiry against her and granted her leave without pay and also an entry of censure. Thus in view of the provision made under Rule 81-B (2) of Financial Hand Book Vol. II (Parts II to IV) Ch. X, it was incumbent upon the respondent no. 3 to sanction leave on

medical certificate to the petitioner. If the petitioner was entitled to medical leave, it should have been granted to her. Thus the action of respondent no. 3 to initiate disciplinary enquiry against the petitioner was not warranted under the law.

In view of above, a writ of certiorari is issued quashing the orders dated 9.7.1998 passed by respondent no. 3 and subsequent orders dated 27.7.2000 and 30.6.2000 passed by the respondents no.1 and 2. The respondents are directed to sanction medical leave to the petitioner according to rules.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 29.3.2006
*Dhyani

Rajesh Tandon, J.